

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

February 12, 2013

Elisabeth A. Shumaker
Clerk of Court

JOSE JESUS SANCHEZ-NARANJO,

Petitioner,

v.

ERIC H. HOLDER, JR.,
United States Attorney General,

Respondent.

No. 12-9556
(Petition for Review)

ORDER AND JUDGMENT*

Before **O'BRIEN**, **McKAY**, and **BALDOCK**, Circuit Judges.

Jose Jesus Sanchez-Naranjo petitions for review of an order of the Board of Immigration Appeals (BIA) dismissing his appeal from a decision of an Immigration Judge (IJ) denying his application for adjustment of status and ordering his removal. Because the BIA has since reopened the proceedings and remanded for a new decision by the IJ, we dismiss the petition for lack of jurisdiction.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this matter. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

We have jurisdiction under 8 U.S.C. § 1252(a)(1) solely to review final orders of removal. *Padilla-Caldera v. Holder*, 637 F.3d 1140, 1144 (10th Cir. 2011); *Hamilton v. Gonzales*, 485 F.3d 564, 566 (10th Cir. 2007). “[T]he grant of a motion to reopen vacates the previous order of deportation or removal and reinstates the previously terminated immigration proceedings.” *Bronisz v. Ashcroft*, 378 F.3d 632, 637 (7th Cir. 2004), *quoted in Ribas v. Mukasey*, 545 F.3d 922, 931 (10th Cir. 2008). Thus when, as here, the BIA reopens a previously concluded removal proceeding and remands for a new decision by the IJ, the prerequisite for circuit court jurisdiction ceases to exist and any pending petition for review must be dismissed. *See, e.g., Gao v. Gonzales*, 464 F.3d 728, 729-30 (7th Cir. 2006); *Lopez-Ruiz v. Ashcroft*, 298 F.3d 886, 887 (9th Cir. 2002); *Satheeskumar v. Att’y Gen. of U. S.*, 480 F. App’x 121, 123 (3d Cir. 2012) (following *Lopez-Ruiz*); *Gafurova v. Holder*, 448 F. App’x 139, 140 (2d Cir. 2011) (same).

Seeking to avoid that conclusion, Mr. Sanchez-Naranjo argues that we have jurisdiction under 8 U.S.C. § 1252(a)(2)(D), because his petition for review raises constitutional issues. He misapprehends the effect of § 1252(a)(2)(D), which is not an independent grant of jurisdiction. Rather, it only *preserves* our jurisdiction under § 1252(a), in the face of certain other statutory prohibitions or constraints, for “constitutional claims or questions of law raised upon a *petition for review filed . . . in accordance with this section.*” *Id.* (emphasis added). A petition for review obviously fails to satisfy the emphasized condition if it does not relate to a final

removal order as specifically required by § 1252(a)(1). As this court clarified in *Hamilton*, § 1252(a)(2)(D) “did not confer an expanded grant of jurisdiction but merely confirmed our authority to review constitutional claims and questions of law . . . only after a final order of removal has been entered.” *Hamilton*, 485 F.3d at 567 (internal quotation marks omitted) (holding § 1252(a)(2)(D) did not provide basis for judicial review of legal challenge to visa revocation absent final removal order); *see also Green v. Napolitano*, 627 F.3d 1341, 1347 (10th Cir. 2010) (following *Hamilton* to hold § 1252(a)(2)(D) could not provide basis for judicial review of constitutional challenge to visa revocation absent final removal order).

In sum, the petition for review no longer has a jurisdictional foundation in § 1252(a)(1), and § 1252(a)(2)(D), by its own terms, has no operation here. Once the BIA reopened and remanded the underlying proceeding for a new determination by the IJ, there ceased to be a final removal order properly before this court for review.

The petition for review is dismissed.

Entered for the Court

Monroe G. McKay
Circuit Judge